

**BRIGHAM CITY PLANNING COMMISSION MEETING
TUESDAY, JUNE 03, 2008 – 6:30 PM
BRIGHAM CITY COUNCIL CHAMBERS**

PRESENT:	Joan Peterson	Chairperson
	Barbara Poelman	Vice Chairperson
	Lynda Berry	Commissioner
	Deon Dunn	Commissioner
	Paul Fowler	Commissioner
	Roger Handy	Commissioner
	Reese Nielsen	Commissioner

ALSO PRESENT:	Ruth Jensen	City Council Liaison
	Paul Larsen	Economic Development Director (Acting City Planner)
	Jared Johnson	Community Development Manager
	Jeff Leishman	Associate Planner
	Eliza McGaha	Secretary

EXCUSED:	Delwin Lee	Alternate
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AGENDA:

WORK SESSION – AGENDA REVIEW

REGULAR MEETING

PLEDGE OF ALLEGIANCE

~~APPROVAL OF WORK SESSION MINUTES AND REGULAR MEETING MINUTES~~

PUBLIC COMMENT ¹ *(Per Utah Code, will receive input only, no decision can be made)* for items not listed on the agenda.

CONTINUATION OF APPLICATION #3021 / CONDITIONAL USE PERMIT FOR “ESSENTIAL FACILITIES” 345KV TRANSMISSION LINE / ROCKY MOUNTAIN POWER

CONTINUATION OF APPLICATION #2383 / REQUEST FOR REVIEW OF CONDITIONAL USE PERMIT #2383 / 1047 WEST 600 NORTH / LLOYD MCNEELY & JOYCE WILEY

CONTINUATION OF APPLICATION #3023/ CONDITIONAL USE PERMIT – HOME OCCUPATION – BREEDING OF DOGS / 477 NORTH 300 WEST / CHRISTIAN SUTCH

DISCUSSION:

REGULAR MEETING:

Ms. Peterson opened the regular meeting at 6:38 p.m. Ms. Dunn led the Pledge of Allegiance.

MOTION: A motion was made by Reese Nielsen to amend the agenda to remove approval of the work session minutes and regular meeting minutes. The motion was seconded by Barbara Poelman and passed unanimously.

PUBLIC COMMENT (*Per Utah Code, will receive input only, no decision can be made*):

There was no public comment.

CONTINUATION OF APPLICATION #3021 / CONDITIONAL USE PERMIT FOR “ESSENTIAL FACILITIES” 345kV TRANSMISSION LINE / ROCKY MOUNTAIN POWER:

Mr. Johnson explained that this is an ongoing agenda item for a high voltage power line on the east bench of Brigham City.

Mr. Nielsen asked if, at this point, Staff had sufficient time to do research to compile what they would consider a comprehensive set of conditions to which they would apply to this permit should the Planning Commission deem it appropriate to approve it. Mr. Johnson replied that, at this point in time, the Staff has compiled conditions and are still reviewing additional things. Mr. Nielsen stated that in light of Staff still compiling information for conditions and the understanding that there will be further legislative or public hearings with respect to this application he would make a motion.

MOTION: A motion was made by Reese Nielsen to continue application #3021. He said he did not have an appropriate date at this time. He said he knew there was a planned meeting on the 18th. The next Planning Commission meeting is the 17th and he said it might be appropriate to continue it, at this point, to the first of July at which time there may be some further input from Staff at which time they can get the input from Staff so the Planning Commission can formulate some additional conditions in review of this application. The motion was seconded by Roger Handy.

Discussion: Mr. Handy said he would feel more comfortable if they had Staff come back with the list on the 17th but does not necessarily mean that action needs to be taken at that time but at least the Commissioners could review the work up to that point.

Mr. Nielsen amended his motion that they still continue the application to the first of July and that Staff provide the Commissioners, for their review at the next meeting, with their recommendations so they can be reviewed prior to the following meeting.

Mr. Johnson encouraged the Commission to have the applicant come to the table to see if they have any more information they would like to present that has not been presented previously. He said that, in regards to the conditions, one of the other items that will be forwarded to the Commission is the geotechnical report that Rocky Mountain Power (RMP) had done and sent to the Brigham City Emergency Services Director. Ms. Poelman asked if that was the same report that was done two or three weeks ago by the Geological Survey people. Mr. Johnson said this report was done prior to that one but RMP is aware of the study that was just performed and the work that was done. They are working with USGS on the findings and any changes they would make to their report. Mr. Larsen added that in addition to getting the geotechnical report that was submitted by RMP

to the Commission for their review, they also need to get it to the City Engineer so he can review it and comment on it.

The motion passed unanimously.

It was clarified that application #3021 had been continued to the July 1, 2008 meeting and the list of Staff conditions and engineering data would be ready and to the Commissioners by the June 17, 2008 meeting.

Steve Rush, Rocky Mountain Power (RMP) came to the table. He asked the Commissioners if they had a sense of what the issues still under review were so they could work on them in the interim. Ms. Peterson said one would be the geotechnical report that they would like to look at and get an opinion on that from the City Engineer. Mr. Larsen commented that, from an engineering perspective, he felt he was not really qualified to review the geotechnical study in the same way the City Engineer is. He said that it is fairly common with all applications when there is a geotechnical study submitted; the Engineer reviews them and in the majority of the cases find that they are correctly done and the findings are correct. They may have some recommendations back to Staff that have to do with engineering and sometimes there is interplay with the applicant and the engineer to make adjustments. Mr. Larsen said he thought that was for the City Engineer to come back and tell Staff if there are those kind of items; beyond that, there is some in-house Staff that may have some comments on the geotechnical report.

Mr. Handy commented that at the last meeting they asked for some siting criteria and some general siting criteria was given and answered some of the questions in the interwalk utility document. He asked if it would be possible to get the actual siting documents from RMP or if that was privileged information as the Commissioners would like to see that information. Mr. Rush said they could give them some information on that. He said when they made their presentation to the Council of Governments, part of what was going to be in that presentation but was cut off was a great deal of conversation about all of the choices that were evaluated and why they were either in play or taken out. Mr. Rush said they could give the Commission the extended version of that.

Mr. Nielsen said he would like more detail of what went back and forth between RMP and the City Staff about how the City is satisfied that the adjustments in the proposed line will not have an impact on the potential water situation with the wells and springs. Mr. Johnson said they could provide further documentation on that. He explained that, last week, City Staff and RMP physically drove up on the hillside and identified where the current well site is, the protected springs and where two new well sites will be. City Staff gave RMP and their Engineer the criteria of different zones required by the wells. In zone one, it is a 100-foot diameter from the head of the well and there can be no possible contamination sources in that area. That information was given to RMP and their Engineer so when they do their final design concept it will not fall into any of those protected zones. Mr. Rush explained that what was involved in that were a couple of slight angles. There is an existing transmission line up on the hillside with access and Questar Gas also has their pipeline up there with the RMP spacing with the existing 138kV line. He said it was a very good work session. They talked about the history the Staff has had with working with the springs and some of the challenges that have come up in making sure RMP does not repeat any of the mishaps that have taken place; mishaps as in drilling and finding something that was not being sought. Mr. Rush said they could satisfy that question very readily and give the Commission a thorough write-up.

In regards to the application being continued to the July 1st meeting, Mr. Rush asked, as they work with Staff in the interim to go through the process and answer the questions, what a reasonable expectation of time would be of having the Commission take a vote and move forward. Mr. Nielsen replied that if they get all the information dumped on them the day of the meeting, it would be hard to make a decision that day but as they have asked the Staff to give them most of the data by the next

meeting, it would give them time to review it before the July meeting. He said if they have all the data it might happen. There are a lot of considerations that have been talked about in previous meetings and thus far there are some issues that have been covered with a broad brush such as the concern about electromagnetic fields. There has been no definitive study that states it has caused a problem. Mr. Nielsen commented that is an issue, even in reviewing everything that has been presented, that is tough to prove. He suggested to RMP to give them some mathematical comparisons that would give people confidence in that what RMP is going to add by providing a power line in that location is insignificant compared to what the average person is exposed to in their homes everyday. Mr. Nielsen commented that there will never be a definitive answer because there will always be associations with problems.

Mr. Rush commented that their EMF expert was in attendance at this meeting if the Commissioners would like to revisit that subject. He also repeated the offer to take those who may want to participate in a work session/field trip that they could certainly do as they have the ability to measure and could measure onsite, along their facilities or the Brigham City Power facilities. He said he thought they could give the Commissioners a really good feel for that. Mr. Rush commented that any standards/guidelines that have been established are orders of magnitude and said they are talking about numbers that are 10 milligauss and the standards have been at 800 and 1000 milligauss. He said they could provide that information. Other utilities deal with this all the time and it has been an ongoing dialog for about four decades. Mr. Handy commented that there are some that would be interested in taking that field trip and doing those measurements with RMP. Mr. Rush said at the convenience of the Commissioners, he would bring one of their Engineers and the equipment. He said he knew there is a legitimate concern and that people have understandings and misunderstandings and he would like to demystify this a little bit. He said he would also like to take them to their own facilities.

Mr. Nielsen asked, in respect to the portion that runs through the Brigham City boundaries, if RMP had been in communication with all the affected landowners. Mr. Rush replied that they had not. They have been in contact with one of the gravel companies to do a bore hole for soil samples, which they granted permission to do. He said their intention is to continue to work in the entire project area with property owners. Ms. Poelman asked what percentage of public landowners they had been in contact with.

Harold Dudley, Rocky Mountain Power, came forward. Mr. Dudley said they have only been in contact with those two or three landowners that were mentioned. He said they have from Downey, Idaho on down and are trying to contact as many as they possibly can. One of the functions of getting them contacted is being able to tell them exactly where the line is on their property with survey data; which they have done through aerial surveys. Those things are being completed and they are being contacted. One thing they have done in Brigham City and other communities along the way is they are sending a letter out to each specific property owner that is being impacted and telling them to contact RMP, if they have not yet been contacted, if they have specific questions about their particular property. Ms. Poelman asked what their timeline on the contact letter was. Mr. Dudley replied that the contact letter will go out this week and they will contact everyone along the entire line within the next three months; Brigham City will probably be contacted sooner than most. Ms. Poelman asked if Brigham City would be contacted before Perry and Willard. Mr. Dudley replied that yes, Brigham City would be contacted before Perry and Willard.

Mr. Nielsen commented that there is a line that currently runs up there and he asked if RMP had a utility easement through all the appropriate property owners for that line. Mr. Rush agreed to that statement. Mr. Nielsen asked if they needed to negotiate with the appropriate property holders for additional width to give a sufficient distance from that line to the other line. Mr. Rush answered that question affirmatively and stated that they have been asked by Staff to consider acquiring that property in fee. The purpose in owning the property in fee would enable RMP to have more rights

they could grant back to the City for something as a pathway. When they own strictly right-of-way, they do not have the ability to grant that so they have made the decision, when they negotiate, to ask for that property in fee, which they will have to pay more for, and hopefully property owners will take them up on that. Mr. Rush said they know that is of interest to the City as the Mayor and City Administrator have brought that subject up with him on several occasions and is something that RMP will definitely pursue. Ms. Poelman asked if the path would be detrimental to the users of it. Mr. Rush replied that it absolutely would not be detrimental to them. He said the biggest users of their corridor are Pathways organizations in Weber County. He said he works with Weber County Pathways all the time and they have just granted them more rights down by the Ben Lomond substation going out west underneath their corridor. A number of cities, Clinton, Layton, Clearfield and others, have negotiated with them to use their corridor for pathways. What they have talked about doing up on the bench in Brigham City is a nonmotorized pathway strictly for walkers, mountain bikers and equestrian. They just did that with North Ogden and Pleasant View underneath their transmission corridor. People find it to be a wonderful use because it is a good linear corridor and is a popular way to put the space to good use.

Ms. Berry commented that Mr. Rush had mentioned they had purchased quite a bit of property and asked if there was a reason for that besides helping the neighborhood establish a walking trail. Mr. Rush replied that their internal priority with high voltage transmission lines is to actually own the property, the 150-foot corridor, but they recognize that many people do not want to sell; they want to maintain control of their property. RMP can lease back but their first goal is to own the property so they have more control over what takes place underneath their line. He said they recognize that right-of-way is very acceptable to many people, where ownership is not. Ultimately when it comes to condemnation, they cannot condemn for fee; they can condemn for the use of the property, the right-of-way.

Ms. Berry commented that RMP is going to put this line down through their Weber County corridor where they already have power lines and asked if we would have to worry about that along the Brigham City hillside because RMP made the effort to purchase the property. Mr. Rush replied that in this case they would be acquiring the width only for this particular line. It would not suddenly open a door that would give them an automatic right to put the other line there. He explained that one of the things they have been trying to make clear, that differentiates what is happening in Box Elder County versus Weber/Davis Counties, is that the corridor there was purchased back in the 1970s and 1980s with the expectation that there would be a future line. That property was out away from everything, there was nothing but farming going on out there. In today's planning with managing risk and other things, it has changed dramatically. They are looking for separation.

Mr. Rush said that throughout Wyoming, Utah, Idaho and up into the northwest they are building 1700-miles of transmission lines. The piece coming through Box Elder County is approximately 90-miles and the piece in Weber/Davis Counties is 47-miles. What they are doing in the rest of the states and in Utah is they will come along the backside of the Wasatch Front where they come through Utah County, Toole County and Salt Lake County which is all brand new corridor. None of that other line is going into an existing corridor because RMP wants the separation. He said in Weber/Davis Counties they are so constrained there is no where to go. RMP is trying to build a 138kV line down there, which is what Brigham City currently has on the bench. They have six cities, two counties and the Wasatch Front Regional Council working together to try to find a place through West Weber and West Davis County to put a much smaller footprint line; there is no place to put things. That is why it is different in Box Elder County versus what RMP is doing down there.

Ms. Berry asked if liquefaction had any bearing on the Weber/Davis line. She said it was brought up where the Brigham City hillside was probably low when it came to liquefaction; which was their biggest worry and why they did not bring it along the I-15 corridor. Mr. Rush replied that in Weber/Davis Counties, the number one reason they are going where they are is that they have the

existing corridor; they had 91 percent acquired and they just picked up the last 9 percent in the last few months. He said liquefaction is a concern. Mr. Rush explained when their Vice President, Darrell Girard, spoke in the meeting with the Council of Governments (COG) he talked about managing the risk of the number of lines coming into the Ben Lomond substation from various directions. The piece through Box Elder County does not have that redundancy or the ability to pick up the slack if there is an event. In Box Elder County RMP runs into a lack of options when they get to the point where Willard Bay comes together with the mountain, the Interstate, the railroad and the existing homes; Brigham City, Perry and Willard are in that area. The only way RMP can get the separation they are looking for is to have the line on the hillside away from the existing lines that are over by Willard Bay and the Interstate. The existing existing line that goes through Honeyville, Deweyville and on up into Idaho is a 345kV line and they are separating from that which is why the line will cross down to the west side and follow the interstate.

Ms. Poelman commented that she had seen two power lines together everywhere and asked why it needed to be different here. Mr. Rush replied that they have experienced events where their lines have been derated. There was a particular section of line that was derated as of April 15th because of an event they had. They were unable to serve the loads they were committed to under their Interlocal agreement with other utilities. They had to call their large loads and tell them they were off line because they did not have the capacity because their line was derated. One of the best ways to mitigate that risk is to separate so they cannot be subject to the same event. It cannot always be done as there are a lot of lines in existence. RMP met with Brigham City Staff and determined that where the 138kV line is on the hillside is the point of no more development on the east side of Brigham City. That area is an existing linear corridor and the power lines will not conflict. There are already access roads built in up there which gives RMP an unobtrusive way to get up there and put the poles in, maintain them and access them. Going further east is too steep which makes construction and access very challenging.

Ms. Poelman asked why the potential significant visual resource effects is not an issue in Brigham City as it is in the Willard scenic back way and if the vegetation would be affected in the mountains. Wayne Mills came forward and explained that a big part of that goes back to what Mr. Rush said about paralleling that existing 138kV line. The 138kV is an existing disturbance with existing access roads. The siting criteria is to try to follow those existing disturbance areas. If they had gone in the Wellsville mountains, there is not an existing linear feature in that area so it would be a brand new disturbance in that area requiring new road cuts as well as vegetation removal.

Ms. Poelman asked if there would be more houses disturbed if they went out west than there would be going up on the mountains. Mr. Mills replied that what they found when they were doing the overall routing analysis is that once they get down to the I-15/Willard Bay pinch-point there is not enough room to actually construct the new line on the west side of I-15 or in between I-15 and the railroad; it would actually have to be on the east side of the railroad if the separation criteria was not being taken into consideration. Coming down the railroad corridor from Honeyville south, there are existing and planned land uses, both commercial and residential that would be impacted by going down through that area. Up on the bench where this route is planned, it is generally very low density zoning. In Brigham City the 138kV line in the canal is the development limit.

Mr. Rush commented that they are being tugged in different directions as the cities along the bench want the line to go out west and the cities out west want the line to go along the bench. As to the colors of the poles, Mr. Rush asked them to take a look along the east bench of Ogden by the University up where the shoreline trail is. The poles are prerusted and will continue to get browner to blend in. They do not stand out nearly as much in a backdrop of trees and rocks. He said he could take them to visit other locations where they have done that. They have received high marks from the University, the Pathways group and others because they definitely blend in far better than the galvanized poles in that kind of a setting.

CONTINUATION OF APPLICATION #2383 / REQUEST FOR REVIEW OF CONDITIONAL USE PERMIT #2383 / 1047 WEST 600 NORTH / LLOYD MCNEELY & JOYCE WILEY:

Mr. Leishman explained that he went through all the information and identified all the areas that are relevant to the question before them. He also handed out a letter from Cory Wilkes which was received late the afternoon of this meeting. Mr. Handy commented that they all received a packet which they should have read through and said it may not be necessary to go through the entire packet. Ms. Poelman wanted to know the specific page that mentioned the fence. Mr. Leishman said he noticed that the December 03, 2002 minutes, which are very relevant, were not included in their packets and handed a copy of those minutes out to the Commissioners. This is where the screening was first discussed. On page 7 of the December 03, 2002 minutes Mr. Leishman read; *Mr. Shea expressed concern with the proposed batch plant being close to 600 North and if it's 46-foot elevation would be a problem. Jim Moore, the design engineer, pointed out that the trees would screen the batch plant when it was closer to them and that it would be more visible the further back it was from 600 North. Cory Wilkes, property owner, explained that the Army Corps of Engineers had forbidden him from removing any trees along the creek.* Mr. Leishman explained that they are going to screen from the objectionable situations that are on the property which need to be dealt with to protect adjacent property owners; the screening is to screen what is on the property, not the building.

Mr. Leishman continued reading from the December 03, 2002 minutes; *Mr. Kotter asked what type of fence he proposed for the nonclimbable fence as noted on the plan. Mr. Wilkes stated that he anticipated chain link with barbwire across the top. Mr. Kotter asked if Mr. Wilkes was open to a requirement of having to pay for dust monitoring if it became a problem. Mr. Wilkes acknowledged that he was responsible for containing dust on his own property but did not want to be burdened with open-ended cost that he could not foresee. Mr. Wilkes described ways that he could control dust on the aggregate piles and batch plant equipment. Mr. Haderlie expressed his concern with fugitive dust from the batch plant and the size of the facility so close to the road could be a concern. Mr. Wilkes stated that he felt that the closer the batch plant was to the trees the better it would be screened. Mr. Leishman explained that he had met with Mr. Lloyd McNeely, the property owner to the west, and that he was concerned about fugitive dust but that he expressed his appreciation to Mr. Wilkes for addressing concerns that he has had and felt that Mr. Wilkes had been a good neighbor and will continue to be so. There was discussion on use of trees as screening and if trees die what Mr. Wilkes will do to replace those trees. Mr. Coleman asked if trees could be used on all borders of his property for screening and wind control. Mr. Wilkes pointed out that he has proposed buildings on the east and west sides of the property. Mr. Leishman then read part of the motion; Steve Kotter made a motion to approve the conditional use permit based on the condition that it will meet all zoning, City, building code requirements, Staff and Engineer requirements. That the trees along the north property line will be maintained and if they are lost they will be replaced in equal number. That methods be employed to control dust, such as sprinklers, water, etc on piles, roads, ect. That the fencing be at least a chain link fence with vinyl slats or other respectable screening methods made for chain link fences.* Mr. Leishman stated that was the basis of what brought this application to the further discussions later on.

Ms. Peterson commented that the fence was not going to go clear around the property. Mr. Leishman added that the building would screen the sand piles, the batch plant and those objectionable things that could be detrimental to the neighbor.

Joyce Wiley asked if she could get the Commissioners to read another statement on page 7, application #2383; *Mr. Haderlie discussed the proposed development and that this is for the approval of the proposed buildings. The buildings marked future would need to have information submitted and approved separately at a later time.* Ms. Wiley stated that approval was for the buildings and the discussion of the other issues were a part of the general plan but when it came to talking about fences she asked how one would recognize there was a drawing there and that the fence and the trees were meant to screen only the street and that there was not a fence to be built around the

remainder of the perimeter. She said they did not have access to submitted drawings which were continually updated. She asked why, in that meeting, the fence would be waived only behind the building if the fence was not required around the perimeter of the building. There are several drawings. Mr. Leishman stated they have tried to show how the building evolved.

Mr. Handy commented that it appeared that most of the concerns allude to having to do with sand, gravel and dust and at some point the building on the west side was discussed as being a screen; however, the fact that the building needed to have back doors was never adequately discussed in the minutes and maybe not considered as being detrimental to whatever screening the building provided to the neighbors. Mr. Leishman stated that was correct and said he never saw in any of the minutes where back doors were discussed. It certainly shows in one of the drawings but he did not see that it was ever discussed by the Planning Commission. Mr. Handy referred to the letter from Mr. Wilkes, his sympathy with the property owner, his feeling that there should be a fence there and his willingness to do something about it. He has his own way in which he would like to approach it and had given various options. Mr. Handy said he thought there was recognition on part of both parties that a fence needs to be there to screen the property, which was there before the business, from the detrimental effects of having the back doors of the number of shops very close to and over looking the property because they appear to be a little bit higher. He said it appeared to him that both properties are in agreement that the fence is needed and the only decision the Planning Commission has to make is what kind of fence they want to require or suggest and what time frame they would like to see one put up.

Mr. Leishman referred the Commissioners to the letter from Mr. Wilkes and the four options he proposed. In one of the options he asked that the adjacent property owners pay for the material and he would install it which may not be an acceptable solution. Mr. Handy asked Ms. Wiley if they did not agree to pay for the materials for the fence. Ms. Wiley commented that she objected to the letter from Mr. Wilkes. She said she had not had time to read the letter. She said that through the approval, every meeting they came to there was new data that they had not had access to. She stated that because of the letter, she would like to go through her handout. She objected to Mr. Wilkes statements regarding discussions with her husband and her husband being upset. With what they have been through while the retaining wall was built, what they saw contractors do in their backyard and what was painted on the wall Ms. Wiley said she would not have the letter.

Mr. Fowler commented that he had not read the letter, as it was just presented to them, but the only thing they were reading in it, at this time, were the four possible solutions to work out, which is the part he believed to be pertinent. Mr. Leishman commented that prior to the four possible solutions is discussion; one side says one thing and the other side another, which is not relevant. Mr. Fowler said it was not relevant to what they need to resolve but the possible solutions may be. Ms. Wiley was agreeable to consider that. Mr. Handy clarified that there was no agreement that she would pay for the materials for a fence. Ms. Wiley stated that she called Mr. Wilkes and made an offer and he said he had no money for a fence. She said that last year they were going to help split but that is not on the table at this point and has not been discussed. She said the first possible solution assumes that a fence was not required and she asked to have her handout put in where she believed a fence was required. Ms. Wiley read her handout.

Chronology of building approvals in the package prepared for June 3, 2008 meeting

9-30-03 Staff meeting minutes, Mr. Haderlie: "storage units are for storage of personal goods and are not to be used as retail, wholesale or office space use."

10-7-03 Planning Commission meeting, Mr. Wilkes: "buildings are for offices and landscaping products." The changes were approved.

10-31-03 Wilkes letter: "building almost identical" "difference dual pitched roof...approve west building to be built as rental shops."

11-20-03 Wilkes letter: "Seven 46X50 shops which we will rent out at some time in the future. At this time, however, the entire building will be for our own use."

11-25-03 Staff meeting, Mr. Haderlie: "has been approved for a building on west property line. He has returned because he is requesting to change the material that the building is made of and to modify the length of the building."

12-02-03 Planning Commission meeting motion: "1. All of the conditions remain the same and to state that only the materials and the building size were changing." Item number 6 was added to include requirement of a landscaping plan for the west side of the building. Changes approved.

Exhibit M was provided four months after the building approvals which included three drawings. Ms. Wiley explained that it was a part of an appeal that she and her husband had regarding 40-foot sand piles in a light industrial zone. It had nothing to do with the building. That was the first time they ever had access to the drawings that showed a building with doors in it. She said there were drawings dated 8-20-02, April 2001 and 11-3-03 that do not have buildings in them. She said she had not seen that drawing prior to the appeals review. She said the additional information that she added was two pages out of the December 3, 2002 Planning Commission where they discussed the fence. She said she would like someone to help her understand that the fence pertained to the same area where the trees are; only to the trees. She said it was not acknowledged to the general public and then she asked why the fence would be waived only behind the building if it was not ever required.

Ms. Peterson commented that it was probably assumed where the fence would be but it is on the drawing. Mr. Fowler said there may be some confusion in the discussion because, as he was reading through it earlier, it was talking about erosion vents and then all of a sudden in place of that it was talking about chain link. Mr. Handy commented that this is a situation that developed because this went on over a long period of time; the plan was changed a number of times and no one was able to follow through with whatever consequences would happen. He said he stood by his earlier comment that he thought a fence needed to be put up to protect the property owner which is a reasonable addition to the conditional use permit. He said he thought it was assumed in the original approval that the discussion was the protection of the property from the business next door.

MOTION: A motion was made by Roger Handy that as a condition of continuing to keep the conditional use permit in that area that a 6-foot solid fence of a type, be negotiated between the property owners with the help of Mr. Leishman or someone appropriate from the planning department, be installed ~~hopefully~~ within the next six months and that Mr. Wilkes come back with a plan at his earliest possible convenience. The motion was seconded by Reese Nielsen.

Discussion: Mr. Nielsen said he did not know enough about the topography there to know if 6-feet is sufficient. Mr. Handy said that because the property is a little higher, he thought 6-feet would be sufficient. Mr. Nielsen suggested something that would provide a sufficient visual barrier; the term solid fence implies solid as opposed to slatted chain link. Mr. Leishman asked if they were proposing the fence to be all the way across the back of the building or just in the door areas. Mr. Handy clarified that it will be all the way back across the back of the building. He said his particular belief is that a chain link fence, whether slatted or not, cannot provide much protection from any neighbor from any other. His idea would be some sort of a wood or block fence. He said he did not pretend to know what would be appropriate in this situation which is why he thought it should be discussed between the City and the property owners as to what might be appropriate and acceptable to all parties. Mr. Nielsen said he would go along with that. He said the definition of solid has a lot of

leeway to it but as long as it is satisfactory between the effected property owners and the City and it provides sufficient physical and visual protection it will be agreeable. Mr. Handy said that would be agreeable to him. Mr. Leishman asked if this was an addition or a clarification of what was previously approved. Ms. Peterson stated it was a clarification.

The vote was taken and Deon Dunn voted against the motion as she had a question for clarification. She said in all of the suggestions Mr. Wilkes gave he stated he had a timeline by which he would get the fence installed based on certain events falling into place and she asked if time was a part of the motion. It was clarified that a six month time frame had been mentioned in the motion which would coincide with Mr. Wilkes timeline.

Roll Call:

Reese Nielsen – Aye

Paul Fowler – Aye

Barbara Poelman – Aye

Lynda Berry – Nay

Roger Handy – Aye

Deon Dunn – Aye

The motion passed 5 to 1.

The zoning for the Wiley-McNeely property is A-5 (Agriculture 5-acres per lot) and the zoning for the Wilkes property is M-D. Mr. Fowler commented that in other cities they have an ordinance that requires an undefined buffer such as a masonry fence as a protection for zone changes. The idea for a buffer is to protect the people in different zones from the activities that may conflict with the uses in a neighboring zone. Mr. Leishman suggested that the Planning Commission consider placing something like that in the ordinance to help solve additional problems in the future.

CONTINUATION OF APPLICATION #3023/ CONDITIONAL USE PERMIT – HOME OCCUPATION – BREEDING OF DOGS / 477 NORTH 300 WEST / CHRISTIAN SUTCH:

Mr. Leishman explained that it is important to note that in this residential zone kennels are not allowed and it is proposed that if this application is approved that it be regulated so it does not turn into a kennel; which would limit the applicant to no more than two dogs being more than six months old. In the Staff recommendation it stated that this use is better suited to a more rural setting. If conditions can be imposed that mitigate impacts to the neighborhood than the use should be approved irrelevant of whether it is better suited for a rural area; which is not relevant.

Mr. Leishman said he consulted with some Staff members and they came up with some areas that may impact the neighborhood. One of the areas is odor from waste. Solid waste should be collected and disposed of on a regular as-needed basis. Solid waste can be placed in a City garbage can if it is dry and mixed with sand, saw dust, commercial pet litter or similar absorbing material and double wrapped in paper or placed in a separate plastic bag before being placed in the refuse container for disposal. This will be an acceptable method for disposal. In regards to liquid waste, the Wastewater Division has said that over repetitive times urine gets in the soil and there is not much that be done with that. It could be chemically treated but that would detrimentally affect the health of the animals. Their suggestion is that the dogs be housed on a washable, nonabsorbent surface such as concrete. Frequent washing with large amounts of water will dilute the urine accumulation that otherwise would collect in the soil. Excessive dog food is an attractant to rodents. Training of the dogs could control their barking behavior and proper vaccination of the animals would control the spread of disease.

Those are the four areas that Staff found need to be mitigated.

Christian and Anemarie Sutch came forward. They stated that the four areas mentioned as needing to be controlled are nothing they have a problem with. Mr. Sutch said they do train their dogs to not bark. They practice the solid waste disposal but have not done so with the sand or litter but is something they certainly can add. Their females stay in the house and the pups have a whelping pen. They have an enclosed porch that is out their main back door but is inside of their home; after two weeks the puppies go out there. They keep cedar chips in that area which is on linoleum and is cleaned out regularly. When the puppies get older, they go outside where the dog house is which is on a 10x10 area filled with aggregate that is hosed out. There is a run that is a part of that where the female dogs go out during the day. The puppies are gone by eight weeks. They do not take them outside because of disease. At that point in time, they only receive their first shots and are susceptible to disease. They don't keep them outside for that reason and also because they do not want them to get stolen. The puppies go outside when they can go with them.

Mr. Fowler asked how long they have had dogs. Mr. Sutch replied that he has had dogs all his life. Mr. Fowler also asked if there had been any complaints from neighbors. Ms. Peterson said there were some complaints from the previous meeting. Mr. Sutch said they did not see the letters that were sent in but there was a complaint regarding barking. He said that all the things on the Staff list they already take care of in their own practice. Ms. Sutch said that one neighbor talked about barking and there are a lot of dogs in the neighborhood that bark. The neighbor that voiced the complaint said he did not know whose dogs were responsible for the barking. Mr. Sutch said that a mother dog will muzzle her own pup when she does not want it to do something. He said they have the same training for their dogs. Dogs get excited and will bark when they want something. Dogs bark and barking will happen but they learn when they are taught and will listen to the command to not bark.

Mr. Sutch said they always keep their dog food in containers with lids. They have always had pets but this is the first time they are doing it commercially. They have people that are coming to them for certain dogs. They breed a specific breed of pointing Labrador which is not common. They comply with the City on vaccinating; all of their puppies are vaccinated as they are regularly scheduled.

Ms. Poelman commented that she was not clear as to how they take care of the urine all the time. Mr. Sutch said there is no smell even with the two dogs they have fulltime. They have a dog adjacent to their property, on the south, which has a noticeable odor if you come within 10-feet of that property. There is no smell in their yard. Mr. Sutch commented that as to the concern about the number of dogs, they have taken care of that and placed the other dogs elsewhere. The male dog is brought to their home for the day but does not stay overnight. The puppies are there until they are about eight weeks old.

Ms. Dunn asked if they had the puppies sold prior to the breeding. Ms. Sutch replied that they have people that are waiting for them. There are three or four people that want specific puppies and wait for them. They can only presell a certain number of puppies because it is unknown how many pups will be born in a litter. Ms. Dunn asked how they could guarantee that the puppies are gone in eight weeks. Ms. Sutch replied that they cannot guarantee they will be gone in eight weeks but the demand for the puppies is great and the law states they can have them there until they are six months old; however, they have never had dogs that long.

MOTION: A motion was made by Roger Handy to approve application #3023 with the conditions as outlined in the memo they received from Jeff Leishman and also with provision that the Building Department will inspect this business on a regular basis to make sure it does not turn into a kennel and with the stipulations that it comply with Chapter 29.06 Uses, comply with Chapter 29.30 Home Occupations and

comply with Chapter 29.02.020 Definitions concerning household pets. Establish the quantity of animals so as not to become a kennel as defined in Chapter 29.02.020 Definitions and does not become a nuisance; with the finding of facts that such use will not under the circumstances of the particular case, with the stipulations, be detrimental to the health, safety or general welfare of persons residing or working in the vicinity or injurious to property or improvements in the vicinity and that such use is found to be in compliance with all the applicable ordinances noted above and that such use may or may not be in compliance with the Brigham City General Plan. The motion was seconded by Paul Fowler.

Discussion: Ms. Poelman said she would like to see added to the motion that if it became a nuisance it would be brought back to the Planning Commission for reconsideration. Mr. Handy commented that was an understanding of a conditional use permit. Mr. Leishman stated it was within the text. Mr. Nielsen pointed out that, notwithstanding all the comments, should the Commission decide to approve this conditional use, in his view it does not conform to the City Code in that under the standards for home occupations using attached or detached garages, accessory structures or yard space, in paragraph D, it lists sixteen items that may be considered which are uses that are similar in nature. He said this is not similar in nature to any of those sixteen. Mr. Nielsen stated that in paragraph E, it lists several items which shall not be considered the following uses or uses which are similar in character, origin or impact as determined by the Zoning Administrator. This use is very similar to one which is prohibited only by the fact that we have restricted it by one dog. Notwithstanding the fact that it may or may not get approved, he said that if it is approved, he does not think it complies with what the City Ordinance says in its intent. Mr. Handy commented that intent is debatable to which Mr. Nielsen agreed. Mr. Handy said he believed the reason the definition is in there, as to how many dogs defines a kennel, is to allow such a use if the number of dogs does not meet the criteria for a kennel but he agreed that should it become a kennel, it should be discontinued which is why in the motion he asked for periodic inspections. Ms. Poelman commented that they only have the two dogs. Mr. Handy said as long as they only have the two dogs and have puppies that are gone within six months, they are within the intent of the ordinance.

Roll call:

Reese Nielsen – Nay

Paul Fowler – Aye

Barbara Poelman – Aye

Lynda Berry – Aye

Roger Handy – Aye

Deon Dunn – Aye

The motion passed 5 to 1.

DISCUSSION:

Ms. Poelman said by the next meeting when the Staff is going to report their recommendations, she would like to have the Chairperson read a letter that could go into a publication stating the reasons why the Commissioners would vote for approval, if they did, on the Rocky Mountain application which is what legal counsel has advised the Commission to do. She said they have to go that way unless they have reasons that can be stated. She wanted to make sure the public understands what the Commission's basis is for approval. Mr. Nielsen said he did not think there was any need for that. He said the public will not understand because they are not familiar with it. Mr. Handy said it would only illicit angry responses and more controversy. Mr. Nielsen agreed with Mr. Handy. He said that some of the other municipalities such as Willard and Elwood have made conditions, for example, that say they will not entertain their application until they have letters or some documentation from all the effected landowners; which won't fly because that violates the law. Mr. Nielsen stated that, in his view, the best thing the Commission could do is to come up with sufficient conditions for which they will allow this to be done and, as best that can be done, minimize and mitigate any visual, health, safety and any other impact from the construction of the power line.

It is going to get built eventually. Ms. Poelman commented that she did not want the public to feel that they have not considered their interests and looked at what has been said up and down this area. Mr. Nielsen said the way they could best do that is by providing the appropriate and best conditions they can, recognizing all those issues. Mr. Handy suggested it may be prudent to have Ms. Peterson make a statement to the effect of why they are doing it and why they are in the position they are. Ms. Dunn commented that it is amazing how many people do not have any idea. Ms. Berry said it has been in the media quite a bit. Ms. Dunn commented that what they say about health is not provable one way or the other. It would take too long and cost too much to study effectively. Ms. Dunn said that one thing is for sure; when we are exposed to cumulative effects of electromagnetic fields they can train us. She explained that the electromagnetic field of a body, which is about 60 Hz, will go either up or down based on what it is exposed to. It does not mean it makes people sick, for sure, but it leaves a big question.

Mr. Fowler commented that the further away from town the line is, the less people will have the potential to be effected. One of the things they were saying is the other alternative would be to put the line right through the middle of town. Ms. Poelman said she saw lines in the Phoenix area that had a subdivision built right up to them. In that area, she spoke to a man who was able to sell his house at an increase. Mr. Handy said the reason RMP wants to take them onsite is to show them what the existing substations give off currently.

In regards to a land use seminar in Cedar City, Mr. Johnson said he has requested that they hold one up north. He also mentioned that RMP said they would start talking to land owners in Brigham City prior to any other jurisdictions. The reason for that is a lot of the other entities have received unfavorable legal letters from RMP and in one area legal proceedings have been initiated. He said he had copies of the letters sent to Willard City, Elwood City and Box Elder County. Elwood City has received a second notice.

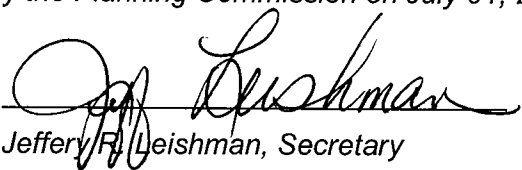
Ms. Berry commented on how communicating versus not communicating with the public caused issues relating to the land fill. She said she went to a meeting with Clark Davis where he downloaded so much information that she felt comfortable with what he was doing but he had not downloaded that information on his website or anywhere people could have all the information that they needed to make a good decision. Mr. Fowler commented that he would not want to choose to put the power line on the bench but that is a more preferable location than the middle of town.

MOTION: A motion was made by Roger Handy to adjourn. The motion was seconded by Lynda Berry and passed unanimously.

The meeting adjourned at 8:18 p.m.

This certifies that the regular meeting minutes of June 03, 2008 are a true and accurate copy as approved by the Planning Commission on July 01, 2008.

Signed: _____


Jeffery R. Leishman, Secretary